LOCAL GOVERNMENT SERVICES DIVISION

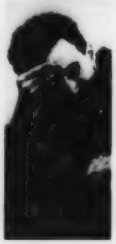
Municipal Services Branch

SOLVING INTERMUNICIPAL DISPUTES

IS MEDIATION RIGHT FOR YOU?

Alberta
MUNICIPAL AFFAIRS

This booklet is the first in a two part series on ONE of TWO *mediation as a method of conflict resolution.*



Conflicts and disputes are a part of life...

Yet, just as there are many types of disputes, there are many methods available to solve them.

Take mediation, for instance.

Mediation is a conflict resolution process involving a neutral third party. Sometimes the mediator acts as a coach, and sometimes as a referee. It's the mediator's job to facilitate an outcome that is acceptable to all parties.

Mediation may be the right approach for your particular situation. This booklet will help you decide if the mediation process is the right process for you.

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The Advantages of Mediation

- Agreements reached through mediation tend to last over time because the people affected by the decisions are the ones making them.
- When parties reach their own agreement, they avoid unpredictable solutions.
- It is generally more cost effective to reach an agreement through the mediation process than through litigation.
- The mediation process protects the integrity of those in dispute and enhances the possibility of a workable future relationship.

Solving The Hostile Takeover
A CASE STUDY

The mediation process is designed to be flexible, allowing the parties to retain control of the process, and to provide a resolution in a timely manner.

A town and its neighboring county had a long-standing dispute over an annexation proposal. The town needed more land – the county felt threatened. Both sides had a strong adversarial history that included lawsuits. Mediation allowed for a solution that didn't involve the courts and satisfied both municipalities.

The Minister of Municipal Affairs met with and encouraged both groups to try mediation, and offered financial assistance as an incentive.

How The Process Worked

Over five months, some 105 hours were spent by the parties, facilitated by the mediation team to develop an annexation agreement that would resolve concerns. To start, each municipality formed a team of five people – three councillors and two staff – to bring forward names of potential mediators. Eventually a team of two mediators was chosen.

At the first meeting, ground rules were set including when the group could meet and the protocols of who could talk at the table. Mediation meetings were held weekly, often for three hours in the evening. Occasionally, a Saturday half-day meeting was used. Each side was represented by a chief elected officer (mayor or reeve), one councillor and a staff member. Alternates were also appointed.

A key to the mediation process was the focus on current and future issues. One mediator encouraged the participants to imagine packing the past in a suitcase and leaving it at the door. This approach allowed the participants to stay on-task.

Early in the mediation process, both sides identified what the critical issues were and why. Each issue was brought to the table and given time for discussion. Everyone was given the opportunity to speak but only one person spoke at a time. In time, work began on drafting a preliminary agreement.

The Results

The final agreement not only provided for a staged annexation, but also a joint drainage study, a schedule for road transfer and maintenance, and an agreement to leave the farm land undeveloped for as long as possible. One of the benefits of this type of process is that it allowed discussion to take place on a wide range of issues. Also, the skills that were developed during the mediation process were transferred to the participants, allowing them to use the same process to resolve conflicts in other situations.

Your Options...

Conflict can be resolved in a number of ways, some more traditional and institutionalized, others more informal and flexible. The options can be placed on a continuum beginning with those which offer the parties the greatest control in shaping the outcome and ending with mechanisms which result in the courts imposing a decision on the parties.

The options include:

Informal discussion/problem solving
Parties work together informally to either reach a solution or agree to drop the matter.

Direct negotiation
Formal unassisted negotiations directly between the affected parties.

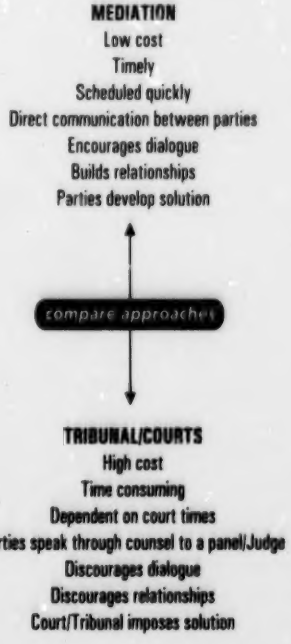
Mediation
Facilitated discussion/negotiations between the parties. A trained neutral third party assists the parties in reaching a satisfactory agreement. The third party has no decision making responsibility.

Arbitration
A private process in which a third party renders a decision after hearing evidence from all involved. The decision is normally binding.

Administrative Tribunal/Courts
Parties make presentations to a panel who hears the evidence and then renders a binding decision. These are usually public proceedings. Decisions can normally be appealed on matters of law or jurisdiction only.

Conflict dispute options can also be examined from the perspective of least cost, both in dollars and time. Least cost options tend to offer the parties the greatest opportunity to:

- participate in developing a solution which meets their interests,
- develop positive relationships to ensure the best chance of implementing the agreement are realized.



Mediation: Built on a Principle of Negotiation

The mediation process is designed to incorporate a *mutual gains approach* to bargaining. It seeks to develop solutions which satisfy the interests of all parties — hence a mutual gain. This approach has been used to resolve disputes as diverse as annexation disputes, international peace accords, road realignments, and intergenerational farm transfers in southern Alberta.

Here's an example.

A rural municipality approached an urban municipality with a request that they merge their recreational programs as a cost saving measure. At first glance, the urban group says, "No way!". The urban municipality has a highly centralized administration structure which controls both expenses and programs. On the other hand, the rural municipality has a decentralized program in which money is handed directly to community groups who deliver the services.

After discussing the matter, the two municipalities came to see that each was interested in creating efficiencies and better serving their residents. Through mediated negotiation, both municipalities realized that they could control expenditures by creating operating protocols. These protocols would set standards for service delivery and provide guidance to the community groups who would be mandated to deliver the services. By entering into this type of agreement, both parties were able to develop a better method of recreational services delivery and also maintain fiscal control.

The mediation process is flexible. It allows parties to retain control of the dispute process, and find their way to resolution in a timely manner.

Example

Party A	**Urban Municipality**
Issue:	Integrating recreational programs
Position:	Recreation services should remain centralized
Interests:	Maximize value for dollars spent
	Central control of expenditures
Party B	**Rural Municipality**
Issue:	Integrating recreational programs
Position:	Recreation services should be decentralized
Interests:	Maximize value for dollars spent
	Community control of programs

Mediated Solution:
The development of operating protocols for service delivery allowed both parties to get what they wanted.

Principles of Negotiation Cont.

This approach asks the parties, when dealing with an issue, to clarify the *positions* they have taken to determine the underlying *interests* that are at the core of an *issue*.

Issues

- are the specific topics under discussion.

Positions

- are solutions to the conflict built on your unique needs. Positions are often prefaced by phrases such as "I want..."; "I will not...:; and "I will ...".

Interests

- are the underlying needs which must be met in order for the matter to be resolved. They are usually hopes, fears, beliefs, and values.

Rather than taking a hardball approach (*the more I get, the less you get*) or a soft approach (*seeking a compromise to placate*), mutual gains negotiations strive to ensure that the interests of all are met. The parties identify as many different items/elements related to a potential solution as they can. This creates a maximum number of opportunities to develop a solution which satisfies all the parties. Determining what those items/elements are requires that the parties have a good understanding of what each other's interests or needs are.

Mutual gains are the central focus of the principled negotiation process developed by Roger Fisher and Bill Ury at the Harvard Negotiation Project.

The theory focuses on five key elements:

(1) ***Interests:***
focus on interests not positions

(2) ***Options:***
generate a variety of options before deciding what to do

(3) ***Criteria:***
insist that the results be based on some objective criteria

(4) ***People:***
separate people from the problem

(5) ***BATNA/WATNA:***
best/worst alternatives to a negotiated agreement - know what they are.

Agreements reached through mediation tend to last over time because the people affected by the decisions are the ones making them.

Selecting Mediators

Generally, all parties to a dispute are involved in selecting the mediators. Alberta Municipal Affairs encourages parties who are considering the use of mediation to use a *team* of two mediators. A team provides a number of advantages. After all, two sets of eyes and ears are better than one. Two mediators also means you have a wider set of skills at your disposal.

Referrals can be obtained from Alberta Municipal Affairs' roster of qualified private sector mediators, The Alberta Arbitration and Mediation Society, or the Canadian Dispute Resolution Directory on the internet at www.nicr.ca.

What to ask

The following questions are designed to assist you in choosing a mediator who best fits your needs. The questions are broken down into five categories:

Training

- ☐ What training do you have?
- ☐ Have you been involved in ongoing professional development?

Experience

- ☐ What experience do you have?
  (Does the mediator's past track record indicate that he or she has the experience necessary to conduct this mediation?)
- ☐ If you don't have substantive knowledge in these issues, how would you handle this deficit?
- ☐ Can you give us some examples of cases/situations similar to this one that you have worked in?

Mediation isn't a walk in the park. It's often stressful. Therefore, it's important that you select a mediator that you trust.

Personal Attributes

- ☐ Have you signed/ endorsed a code of ethics?
- ☐ Can you describe your style as a mediator?

Also note:

Is the mediator a good listener and communicator?
Does the mediator demonstrate integrity and honesty?
Is the mediator free of any previous involvement in the dispute, can they function independently?

Process

- ☐ Who is responsible for meeting logistics, preparing agendas, keeping meeting notes?
- ☐ What expectations do you have of each of the parties?
- ☐ Can you explain the process that you intend on using?

Also note:

Can the mediators work together as a team?

Fees

- ☐ What do you charge for your services? How much will this process cost? Is there a way in which we can keep costs down? How much time will it take?
- ☐ Do you have separate rates for travel time?
- ☐ Is the same rate charged for preparation as for the actual mediation?

Also Note:

The Alberta Arbitration and Mediation Society advises that the fee schedule ranges from $100 per hour for a mediator with limited experience to $200 per hour for an experienced, senior mediator.

Selecting Mediators Cont.

After interviewing the mediators take some time to reflect on their responses.

How did they communicate with you?
Were they good listeners?
Did they ask good questions?
What knowledge did they have about the dispute, its context, politics, etc.?
Would this person be acceptable to all the parties involved in the dispute?

The ultimate question is:

Would this person be a good fit and would you feel comfortable working with them?

Remember the mediators will be working with you and the others during some tense times. It's important that you trust the mediators to run a fair and impartial process.

Once you are satisfied with the credentials of the mediator, check his or her references.

When retained, the mediator will work with the parties to draw up an "Agreement To Mediate". It outlines the mediation process, procedural guidelines, and service fees. This agreement is signed by all parties.

Frequently Asked Questions

What is mediation?

Mediation is assisted negotiation. A neutral third party is brought in to help the parties develop a solution to which they both can agree.

Does mediation mean I give up my right to go to court?

No. Mediation does not remove any rights you might have under the law. In many cases mediation succeeds in reducing the number of issues in dispute, thereby reducing the scope of the issues which remain to be heard by a tribunal or board.

When does mediation work best?

Mediation works best when the parties have room to be flexible and where there will be an ongoing relationship once the issue is resolved.

Will the mediator impose a decision if we can't find one?

No. A mediator is not a decision maker. It is up to the parties to craft a solution that meets their needs. The mediator is only there to guide the process and to keep the parties talking.

Where do I find a mediator?

Alberta Municipal Affairs has developed a roster of private sector mediators. The Alberta Arbitration and Mediation Society keeps a list of active mediators in the province. In addition you can access the *Canadian Dispute Resolution Directory* sponsored by The Network: Interaction for Conflict Resolution at www.nicr.ca.

Alberta Municipal Affairs' Intermunicipal Dispute Resolution Service seeks to provide municipalities with the greatest degree of flexibility possible.

How much will this cost us?

The rates charged by mediators vary according to the mediator's training and experience. The geographic location also effects costs. In some cases your community might have a community mediation program that can provide well trained volunteers.

Who pays?

Normally the costs associated with mediation are shared equally among the parties. Decisions related to this issue are made as part of the agreement to mediate. Alberta Municipal Affairs' *Intermunicipal Dispute Resolution Initiative* may cover a proportional cost of the fees charged by the mediator(s).

Does the agreement have a legal standing?

In most cases the parties involved will have the final agreement reviewed by their own legal counsel. Depending on circumstances, legal counsel and/or municipal administrators may also be responsible for creating any documents needed to implement the agreement.

Does my lawyer have to be present?

Legal counsel is usually not present during the mediation session. Parties are, however, encouraged to ensure that their legal counsel has had an opportunity to review any agreement before the parties sign off on it. When legal counsel is present their role focuses on assisting the party in exploring options rather than functioning as an advocate.

What if the matter is before the courts or an administrative tribunal?

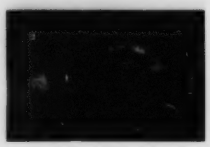
It is not uncommon for mediation to take place after an appeal has been filed. When that occurs the parties work together to develop a strategy to put the appeal on hold until the mediation effort runs its course. Note that, in certain cases, the Municipal Government Act requires parties to attempt mediation before filing an appeal.

What does 'consensus' mean?

Consensus ranges from total agreement by all the parties, to agreeing not to disagree (I may not agree with a certain specific item in the final package but I do agree with overall package itself).

Notes

Intermunicipal Dispute Resolution Initiative



Alberta Municipal Affairs' Intermunicipal Dispute Resolution Service encourages the use of mediation. Mediation provides municipalities with the greatest degree of flexibility possible to develop solutions which meet unique local interests. The initial focus of the department is on reconciling the interests of the municipalities, eliminating the need to argue the case before an appeal board or court.

The department encourages face–to–face negotiation between municipalities and can assist in designing dispute resolution systems which can be incorporated into intermunicipal plans. The department can also help obtain the services of qualified private sector mediators to assist in resolving a dispute.

Employing a mediator does not preclude any of the parties from pursuing other means of dispute resolution. If so inclined, parties can proceed to a hearing by the Municipal Government Board, the courts, or other means of dispute resolution.

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